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NOTES OF CASES.

Accident Insurance—Aiding Officer in Pursuit of Criminal as Voluntary Exposure to Danger.—In *Sackett v. Masonic Protective Association*, 183 N. W. 101, the Supreme Court of Nebraska held that the fact that the insured was killed while voluntarily aiding a peace officer in the fresh pursuit of persons reasonably suspected of having committed a crime, and seeking to escape, would not, as a matter of law, defeat recovery in an action upon a policy of accident insurance under a provision thereof that the insurer should not be liable in case of "voluntary exposure to unnecessary danger"; but that the question whether, in performing his duty as a citizen, the insured incurred needless risk, was for the jury.

The court said in part: "Was it 'necessary danger' within the true meaning and interpretation of the language relied upon to defeat the policy? That question should be answered in view of what should reasonably be deemed to have been within the contemplation of the parties to the insurance contract. In placing therein a cause defeating liability in case of 'voluntary exposure to unnecessary danger,' the intent was to establish a reasonable limit and check upon the insured in order to protect the insurer against reckless acts and ventures in which the insured might engage, beyond the sphere of his ordinary avocation and mode of life. Whether any particular hazard to which he exposed himself was necessary is to be determined, however, with reference not only to his ordinary activities, but also to those unusual situations and emergencies which are likely to confront any person in the performance of his duty as a citizen. The law gives every citizen the right, when crime has been committed in his presence or within his knowledge, to assist in the pursuit and apprehension of those detected in its commission or under reasonable suspicion of fleeing from justice after perpetrating an unlawful act. *Kennedy v. State*, 107 Ind. 144, 57 Am. Rep. 99, 6 N. E. 305, 7 Am. Crim. Rep. 422; *Brooks v. Com.*, 61 Pa. 352, 100 Am. Dec. 645. And the moral duty to lend aid under such circumstances becomes a legal duty when the citizen is called upon by a peace officer. Rev. Stat. 1913, § 8744. In the interest of the safety and well-being of society, men should not be deterred from the willing performance of that duty through fear that, in so doing, they will overstep the bounds of prudence and forfeit their rights under insurance contracts. The law regards such contracts as made with reference to the perils incident to the fulfilment by the insured of his obligation to assist in bringing criminals to justice. Such hazards do not come within the definition of 'unnecessary danger.' The rule is well settled that exposure to danger in the effort to save human life is not 'exposure to unnecessary danger' within the meaning of the clause under consideration. *Da Rin v. Casualty Co. of America*, 41 Mont. 175, 27 L. R. A. (N. S.) 1164, 137 Am. St.

Rep. 709, 108 Pac. 649. We think there is equally strong ground to hold, by analogy, that the duty of the citizen to act for the preservation of society itself by helping to pursue and take criminals into custody, is none the less urgent and controlling. Public policy forbids that contracts should be given a construction tending to discourage that sense of duty which should, in either case, be instinctive with every citizen. For that reason, the risk incurred in the performance of such duty does not, as a matter of law, constitute 'exposure to unnecessary danger,' but in every case arising under such conditions it will be for the jury to say whether the insured exposed himself so wantonly and recklessly as to have subjected himself to needless risk."

Banks and Banking—Liability for Loss of Valuables Taken for Safe Keeping.—In *Trustees of Elon College v. Elon Banking and Trust Co.*, 109 S. E. 6, the Supreme Court of North Carolina held that where banks have solicited and taken Liberty Bonds and other valuables for safe-keeping, they owe a duty of the care that a prudent and diligent banker would give his own property of like value and importance.

The court said in part: "It is thus well said, in an interesting note by the late Judge Freeman, to be found in 38 Am. St. Rep. 773:

"A very important part of the business of every bank, whether private or incorporated, consists of acting as an agent or bailee for its customers."

"It was at one time held by some courts that such services were outside the scope of authority of banking institutions, but all doubt about their propriety has been removed by such well-considered opinions as *First National Bank of Carlisle v. Graham*, 100 U. S. 699, 25 L. Ed. 750, and *Third National Bank v. Boyd*, 44 Md. 47, 22 Am. Rep. 35. While it is a general rule that an accommodation bailee is liable only for gross negligence, the courts in nearly all recent cases have held that a stricter degree of care is required of banking institutions receiving articles of more than usual value, and holding themselves out as having special facilities for their transmission and safe-keeping. In fact, they are not accommodation bailees, for while a bank 'may not receive any direct compensation for its service, it obtains advantages therefrom in attracting and retaining clients.' Note, *Isham v. Post*, 38 Am. St. Rep. 781. In the case of *Levy v. Pike*, 25 La. Apn. 630, the court discussing a case somewhat similar to this, substantially said:

"Their object was doubtless to increase their deposits, and, of course, enhance their profits; and to accomplish it they held themselves out to the business community as prepared to take care of their valuable boxes. The taking care * * * of these boxes was a part of the business of the bank, by which they doubtless induced cash deposits and made considerable profits. We, therefore, do not regard the deposit in question as only a gratuitous one. Something